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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,708	11/17/2003	Robert Galli	E001 P00515-US5	2344

3017 7590 04/07/2004

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EXAMINER

WARD, JOHN A

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	10/714,708		GALLI, ROBERT	
	Examiner		Art Unit	
	John A. Ward		2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1103</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 15 is objected to because of the following informalities: it is unclear what is meant by the term said enclosure, is it the enclosure of the section housing the light source or battery? Also the claim does not disclose all the metes and bound of the claimed invention. Appropriate correction is required.

As best understood regarding claim 15, the following rejection is given.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Robertson (US 6,086,218).

Regarding claim 15, Robertson ('218) discloses a signal light comprising of a tubular housing 13, having a bottom wall 38 and a sidewall 23 extending upwardly from the bottom wall (figure 3). A battery 17, a flashlight head 10, a tubular side wall and inner outer surface of the flashlight head (figure 3), an end wall 29 having a outer and inner surface, at least one inwardly extending bore having side walls (figure 3), a

mounting board 30 receiving in the opening of the tubular side wall, and at least one light emitting diode 34 in electrical contact with the mounting board.

Regarding claim 16, Robertson discloses in figure 3, that the at least one bore 11 is inwardly tapered.

Regarding claim 17, Robertson discloses that the board houses a plurality of light emitting diodes 34.

Regarding claim 18, Robertson discloses in figure 7 that the board is and diodes are arranged in a circular array.

Regarding claim 19, Robertson discloses in figure 4 that the contact lead of the light emitting diodes 34 are in electrical contact with the board 30.

Regarding claim 20, Robertson discloses that the sealing means 18, so that contaminants cannot enter the housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wener et al (US 6,366,028) in view of Lebens (US 6,095,661).

Regarding claim 11, Wener et al ('028) discloses a battery powered flashlight comprising of a housing 12, having a closed end, an open end (figure 2), electrical power source 22 in the housing, light emitting diode 16, and reflector cup 18.

Regarding claim 13, Wener et al discloses a mounting board 24.

Regarding claim 14, Wener et al discloses in figure 2, that the mounting board 24 has contact leads of the light emitting diodes.

Regarding claims 11 and 12, Wener et al does not disclose a plurality of light emitting diodes arranged in a circular arrangement.

Regarding claims 11 and 12, Lebens et al discloses a light emitting diode flashlight comprising of a plurality of light emitting diodes in a circular configuration (figure 1).

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Wener et al with plurality of light emitting diodes of Lebens et al in order to provide a means of illuminating a circular area being operable at a lower amount of current over that of conventional incandescent lamps.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-8 of U.S. Patent No. 6,626,556 in view of Wener et al (US 6,366,028).

Regarding claims 1-2, 4-6 and 8-9, Galli ('556) discloses all the limitations of claimed invention including a housing, a battery, tubular enclosure, mounting board, a plurality of light emitting mounted to the mounting board, and a switch assembly disposed between the second contact lead of the LED and the second contact of the battery being operable to selectively energize a lighting element.

Regarding claims 3, and 8 Galli does not disclose a reflective cup.

Regarding claims 3 and 8, Wener et al discloses a battery power light comprising of a housing 12, having a battery 22, mounting board 24, light emitting diode 16, and a reflective cup 18.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Galli with the battery power light of Wener et al in order to provide a means illuminating an area using light emitting diodes operating at a lower current over that of conventional incandescent lamps.

Claim 10 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-8 of U.S. Patent No. 6,626,556 in view of Striebel et al (US 6,676,278)

Regarding claims 10, Galli ('556) discloses all the limitations of claimed invention including a housing, a battery, tubular enclosure, mounting board, a plurality of light emitting mounted to the mounting board, and a switch assembly disposed between the second contact lead of the LED and the second contact of the battery being operable to selectively energize a lighting element.

Galli does not disclose a sealant filling the enclosure of the flashlight.

Striebel et al ('278) discloses an emergency light comprising of a housing 22, a light emitting diode 12, and a sealant inside the housing (claim 1).

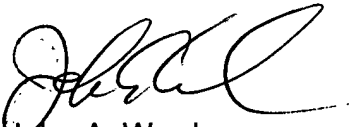
Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Galli with the sealing means of Striebel et al in order to provide a means of preventing any type of moisture into the light source as taught by Stiebel et al (abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 571-272-2386. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAW
April 5, 2004



John A. Ward
Patent Examiner AU 2875